IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3531 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMAR NATH NEOGI

Versus

INDIAN INSTITUTE OF TECHNOLOGY

Appearance:

MR PJ PATEL for the Petitioner

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 02/04/2002

ORAL JUDGEMENT

The petitioner is an engineer, who desires to prosecute his studies in the field of information technology and therefore he applied for admission to Post-Graduate Diploma in Information Technology course conducted by the respondent Institute. For the purpose

of getting admission to the said course, the petitioner had to undergo a screening test and therefore he submitted his application on 11.2.2002. The said application was rejected by the respondent Institute and intimation of the said fact was sent to the petitioner under letter dated 18.3.2002. The petitioner has been aggrieved by rejection of his application and therefore has approached this court with a prayer that the communication dated 18.3.2002 be quashed and the respondent Institute be directed to permit the petitioner to appear at the admission test for the PGDIT course which is to take place on 7.4.2002.

2. Before going into the merits of the case, the learned advocate appearing for the petitioner was asked as to how this court would have territorial jurisdiction to entertain the petition as the respondent Institute is situated at Kharagpur, which is not in Gujarat. The learned advocate has submitted that this court has jurisdiction to entertain the petition for the reason that the petitioner received the impugned communication dated 18.3.2002 at Anand, which is in Gujarat.

3. It has been submitted by the learned advocate that as the communication has been received by the petitioner rejecting his application for appearing at the admission test within the territories of Gujarat, this court is having jurisdiction to entertain this petition. It has been further submitted by him that as cause of action has partly arisen within Gujarat, as per the provisions of Art. 226(2) of the Constitution of India, this court can exercise its jurisdiction to entertain this petition even if the respondent Institute is not having its office in Gujarat.

4. To substantiate the above-referred submission, the learned advocate has relied upon the following judgments :

(i) Modern Food Industries (India) Ltd. Ahmedabad and ors. v. M.D. Juvekar, 29(1) 1988(1) GLR 481. It has been submitted that the Division Bench of this court has held in the case referred to hereinabove that when communication is received by the petitioner at a particular place, the place where the communication is received can be said to be a place where cause of action has arisen in part and therefore the petition under Art. 226 of the Constitution of India is maintainable in the High Court having territorial jurisdiction over the said place.

(ii) Thereafter the learned advocate has relied upon the judgment delivered in the case of Alka Synthetics Ltd. v. Securities and Exchange Board of India and others, (1999) 95 Comp. Cases 363. The learned single Judge of this court has decided in the said case that even if the respondent-SEBI was not having its registered office in Gujarat, as the petitioner of that petition had received communication in Gujarat, this court had jurisdiction to entertain the petition. The view expressed by the learned single Judge in Alka Synthetics (supra) was confirmed in an appeal filed before this court in SEBI v. Alka Synthetics Ltd. in (1999) 95 Comp. Cases 772.

(iii) The learned advocate has also relied upon the judgment delivered in the case of Navinchandra N. Majithia v. State of Maharashtra, AIR 2000 SC 2966. It has been submitted that as per the law laid down by the Hon'ble Supreme Court in the said case, cause of action can be said to have arisen within the territorial jurisdiction of this court and therefore this court can entertain this petition.

(iv) Thereafter the learned advocate has referred to the case of Damomal Kausomal Raisinghani v. Union of India and others, AIR 1967 Bombay 355, to submit that even if the seat of the respondent authority or the person concerned is outside the territorial jurisdiction of the High Court, the High Court can exercise its jurisdiction if whole or any part of the cause of action had arisen within its territorial jurisdiction.

5. Thus, it has been submitted by the learned advocate that this court has jurisdiction to entertain this petition. So far as merits of the case are concerned, it has been submitted by the learned advocate that the petitioner is eligible to appear at the admission test conducted for the purpose of selection of students for admission to PGDIT course. He has also submitted that in the past i.e. in 2001, the petitioner had applied for admission to the said course and on the basis of his qualifications, he was permitted to appear at the admission test, but unfortunately he had failed at the admission test. According to the learned advocate, if the petitioner was eligible to appear at the admission test in 2001, the petitioner ought to have been treated as a person qualified to appear at the admission test and the petitioner's application for appearing at the admission test should not have been rejected by the impugned order.

6. I have heard the learned advocate at length. Looking to the facts of the case, in my opinion, this court has no jurisdiction to entertain the petition as cause of action has not arisen within the territorial jurisdiction of this court. Article 226(2) of the Constitution reads as under :

> "The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

Upon reading Art. 226(2) of the Constitution of India, it is very clear that this High Court can exercise its jurisdiction even if part of the cause of action has arisen within the territories of the State of Gujarat.

7. Looking to the facts of the case, in my opinion, it cannot be said that the cause of action, even in part, has arisen within the territorial jurisdiction of this court simply because the letter dated 18.3.2002 has been received by the petitioner in Gujarat.

8. The respondent is an Institute which imparts education in the field of science. For admission test, several students must have applied to the Institute from different corners of the country. The applications were scrutinized at Kharagpur, which is admittedly not within the territorial jurisdiction of this court. Upon scrutiny of the applications, the respondent did not find the petitioner qualified for being permitted to appear at the admission test and therefore the decision, which was taken at Kharagpur, was communicated to the petitioner. It was open to the respondent Institute to publish the result on the notice board of the Institute at Kharagpur, but instead of doing so, the petitioner was communicated about the said fact under its letter dated 18.3.2002, which was received by the petitioner at Anand. Simply because the communication was received by the petitioner at Anand, in my opinion, it cannot be said that the cause of action has arisen in Gujarat and this court has jurisdiction to entertain this petition.

9. It is pertinent to note that as per the provisions of Art. 226(2) of the Constitution of India, either wholly or in part, the cause of action must arise within the territorial jurisdiction of this court. Looking to the law laid down by the Hon'ble Supreme Court, it cannot be said that simply because the impugned communication was received by the petitioner in Anand, this court can have jurisdiction. Looking to the judgments referred to by the learned advocate, it appears that the law laid down by the Supreme Court or other courts would not help the petitioner.

10. So far as the judgment delivered in the case of Modern Food Industries (India) Ltd. (supra) is concerned, it is very clear that the petitioner in that case had received communication about his dismissal at Ahmedabad. It is also pertinent to note that in the said case there was Ahmedabad unit of the respondent company and in pursuance of the order of dismissal of the petitioner, the petitioner was also paid 90 days' notice pay and the said notice pay was directed to be paid by the Ahmedabad unit of the respondent company. The said fact clearly denotes that the respondent was having its unit within the territorial jurisdiction of this court though the order of dismissal was not passed within the territorial limits of this court. In my opinion, for the aforesaid reason, the said judgment would not help the petitioner.

11. So far as the judgment delivered in the case of Alka Synthetics Ltd. (supra) is concerned, if one looks at the said judgment, it is very clear that the cause of action had arisen within the territorial limits of this court. Suffice it to state that this court, while deciding the case of Alka Synthetics Ltd. (supra) had come to the conclusion that this court had jurisdiction to entertain the petition under Art. 226 of the Constitution of India because the petitioner company was having its registered office at Ahmedabad and its moveable property, which was subject matter of that litigation, was also at Ahmedabad. By the impugned order, the rights of the petitioner company, arising out of the transaction relating to that moveable property were affected. Investigation had taken place at Ahmedabad and in pursuance of the investigation, the impugned order was passed, though it was not passed at Ahmedabad. The facts of the said case clearly denote that in pursuance of the investigation, which had taken place at Ahmedabad, statements of persons were recorded at Ahmedabad and the moveable property in question was in Ahmedabad and therefore it cannot be said that the

cause of action or part thereof had not arisen in Ahmedabad. In the circumstances, the judgment delivered by this court in the case of Alka Synthetics (supra) would not render any help to the petitioner.

12. So far as the judgment delivered in the case of Navinchandra N. Majithia (supra) is concerned, the Hon'ble Supreme Court has discussed the law pertaining to territorial jurisdiction of the High Court in the said case. Decision rendered in the said case will also be of no use to the petitioner. In the said case, the petitioner filed a petition in the High Court of Bombay with a prayer that the complaint filed in the State of Meghalaya be quashed or in the alternative, prayed for a direction for transfer of investigation to any agency of Mumbai Police from the CID, Shillong as, according to the petitioner, all transactions had taken place at Bombay and the complaint was filed in the State of Meghalaya only for harassing the petitioner. The petition was summarily rejected on the ground of want of jurisdiction. Upon perusal of the averments made in the petition, the Hon'ble Supreme Court came to the conclusion that the petition ought not to have been rejected on the ground of jurisdiction because on the averments made in the writ petition, it could not have been said that the cause of action had not arisen within the territorial jurisdiction of Bombay High Court. Facts in the present case are absolutely different. The petitioner before the Bombay High Court could establish that all the transactions had taken place in Bombay and therefore the High Court of Bombay had jurisdiction to entertain the petition. In the instant case, there is no averment in the petition that the cause of action or part thereof has arisen within the territorial limits of this court.

13. So far as the judgment delivered in the case of Damomal Raisinghani (supra) is concerned, looking to the fact that the officers who had initiated the proceedings were within the territorial jurisdiction of the Bombay High Court and as the effect of the impugned order also fell within the territorial jurisdiction of the Bombay High Court, it was held that the Bombay High Court had jurisdiction to entertain the petition. Facts in the case on hand are quite different and, therefore, in my opinion, the judgment delivered in the said case would also not help the petitioner.

14. In my opinion, what is important is to see whether, in the instant case, cause of action, wholly or in part, has arisen in the territorial jurisdiction of

this court.

15. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. In Chand Kour v. Partab Singh [ILR (1889) 6 Cal. 98] Lord Watson said :

> "..... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour."

Thus, it is to be seen whether cause of action, wholly or in part, has arisen in the State of Gujarat. The learned advocate has submitted that the communication rejecting the petitioner's application under letter dated 18.3.2002 has been received by the petitioner in Gujarat and therefore the cause of action has arisen in Gujarat. It cannot be disputed that the petitioner's application for appearing at the admission test was scrutinized at Kharagpur, which is not in Gujarat. After the scrutiny, the application was rejected and therefore it was decided that the petitioner should not be permitted to appear at the admission test. For appearing at the admission test for PGDIT course in my opinion, cause of action had arisen at Kharagpur and not in Gujarat simply because the letter communicating rejection of the petitioner's application was received by the petitioner at Anand. Now, if we look at the well settled meaning of the expression "cause of action" as stated hereinabove, one has to examine whether the event with regard to receipt of the communication in Gujarat is of such importance that if the petitioner cannot prove that event he would not be entitled to claim the relief prayed for in the petition. As sated hereinabove, the result could have been published on the notice board of the respondent Institute at Kharagpur. Instead of doing so, the Institute, so as to help the petitioner and other similarly situated candidates, decided to communicate the result to all the concerned candidates at the addresses given by them. Looking to the facts of the case, the event with regard to receipt of the communication is quite insignificant.

16. The Hon'ble Supreme Court, in the case of Navinchandra N. Majithia (supra), has observed that the High Courts should not transgress into the jurisdiction of other High Courts merely because some insignificant event connected with the cause of action has taken place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. In my opinion, receipt of the communication is not the cause of action but it is an event, which is quite insignificant, but connected with the cause of action which took place at Kharagpur.

17. It may also be noted here that the Supreme Court in the case of C.B.I. Anti Corruption Branch, Mumbai, v. Narayan Diwakar, AIR 1999 SC 2362, has come to the conclusion that simply because a communication is received by a person at a particular place, the place of receipt of communication would not be the place where the cause of action can be said to have arisen.

18. Similar view was expressed by the Hon'ble Supreme Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu and others, 1994(4) SCC 711. In para 8 of the judgment, the Supreme Court has clearly observed that mere receipt of a fax message by the petitioner at Calcutta, would not constitute the receipt of the message an integral part of the cause of action. Thus, one has to see whether receipt of the communication is an integral part of the cause of action. Looking to the facts of the case, in my opinion, the communication rejecting permission to appear at the admission test cannot be said to be an integral part of the cause of action.

19. While determining whether the court has jurisdiction to entertain the petition, the court has to look into the facts pleaded in the petition. Therefore, in the instant case, so as to know whether this court has jurisdiction, one has to look at the pleadings in the petition. Upon perusal of the memo of the petition, it is not clear as to how this court has territorial jurisdiction to entertain the petition. Upon perusal of the memo, nowhere it appears that the cause of action in the instant case has arisen within the territorial jurisdiction of this court.

20. Looking to the facts of the case in the light of the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, in my opinion, this court has no jurisdiction to entertain this petition as the

cause of action has not arisen within the territorial jurisdiction of this court and, therefore, the petition is rejected.

(A.R. Dave, J.)

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